

## Message Text

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ORIGIN EB-08

INFO OCT-01 EA-10 ISO-00 AID-05 CIAE-00 COME-00 FRB-03  
INR-10 NSAE-00 ICA-11 TRSE-00 XMB-02 OPIC-03  
SP-02 LAB-04 SIL-01 OMB-01 NSC-05 SS-15 STR-07  
CEA-01 L-03 H-01 PA-01 /094 R

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COMM/PTO:M KIRK  
EA/PRCM:G FOX  
COMM:J LIGHTMAN

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FM SECSTATE WASHDC  
TO USLO PEKING

C O N F I D E N T I A L STATE 091176

E.O. 11652: GDS

TAGS: ETRD, EIND, CH US

SUBJECT: REGISTRATION OF US TRADEMARKS IN PRC

REFS: A) PEKING 0783; B) PEKING 0798; C) PEKING 0805

1. SINCE THE NATIONAL COUNCIL FOR US-CHINA TRADE ANNOUNCED THE NEW PRC POLICY ON TRADEMARK REGISTRATION IN A PRESS RELEASE ON MARCH 22, THE DEPARTMENT HAS RECEIVED INQUIRIES FROM SEVERAL INTERESTED PARTIES. THESE INCLUDE THE U. S. TRADEMARK ASSOCIATION. IN ORDER TO MAKE OUR RESPONSE TO THESE INQUIRIES AS FACTUAL AS POSSIBLE AND TO ASSIST THE DEPARTMENT OF COMMERCE IN THE PREPARATION OF A PUBLIC ANNOUNCEMENT, USLO IS REQUESTED TO ATTEMPT TO CLARIFY SEVERAL POINTS.

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2. SINCE, AS USLO STATED (REFTEL C) ARTICLE 5, PARAGRAPH 4, OF THE 1963 RULES FOR TRADEMARK ADMINISTRATION SPECIFIES THAT A TRADEMARK CANNOT BE WORDED IN A FOREIGN LANGUAGE, CAN IT BE ASSUMED THAT ARTICLE 5(4) HAS BEEN AMENDED TO WAIVE THIS REQUIREMENT FOR TRADEMARK APPLICATIONS FILED IN PRC BY U.S. APPLICANTS? COULD THE MARK COCA COLA, FOR EXAMPLE, BE REGISTERED AS COCA COLA IN THE PRC?

3. ARTICLE 12 OF THE 1963 RULES FOR TRADEMARK ADMINISTRATION APPEARS TO REQUIRE THAT THERE BE A RECIPROCAL AGREEMENT BETWEEN THE PRC AND THE COUNTRY OF NATIONALITY OF THE APPLICANT. CAN IT BE ASSUMED THAT ARTICLE 12 HAS BEEN AMENDED? DETAILS CONCERNING THE AMENDMENT WOULD BE USEFUL IN ASSURING UNITED STATES FIRMS THAT THEIR REGISTRATIONS OF MARKS IN THE PRC WILL NOT BE DECLARED INVALID AT SOME FUTURE TIME BECAUSE OF FAILURE TO COMPLY WITH THE APPLICABLE REGULATIONS. IN THIS REGARD, IT SHOULD BE NOTED THAT THE U.S. FIRMS MOST LIKELY TO BE INTERESTED IN SECURING TRADEMARK PROTECTION IN THE PRC ARE MULTINATIONAL FIRMS, AND THUS MAY HAVE AVAILABLE TO THEM THE OPTION OF SECURING PROTECTION IN THE NAME OF A SUBSIDIARY OR AFFILIATED COMPANY DOMICILED IN ONE OF THE COUNTRIES WITH WHICH A RECIPROCAL AGREEMENT IS IN FORCE. THESE FIRMS WILL BE REQUIRED TO MAKE A CHOICE AND WILL PROBABLY WANT TO HAVE COMPLETE AND RELIABLE INFORMATION AVAILABLE TO THEM ON THE BASIS OF WHICH TO EVALUATE THE QUESTION WHETHER TO PROCEED IN THE NAME OF THE U.S. COMPANY OR THE FOREIGN SUBSIDIARY.

4. SINCE THE CHINA COUNCIL FOR THE PROMOTION OF INTERNATIONAL TRADE IS THE ONLY AGENCY AUTHORIZED TO REPRESENT FOREIGN APPLICANTS BEFORE THE CENTRAL ADMINISTRATIVE BUREAU FOR INDUSTRY AND COMMERCE, CAN IT BE ASSUMED THAT ITS STATEMENT IN REGARD TO THE NEW POLICY IS CONGRUENT  
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WITH THAT OF THE OFFICIAL BODY THAT DETERMINES THE REGISTRABILITY OF TRADEMARKS IN THE PRC?

5. REFERENCE IS MADE IN THE LETTER OF MARCH 4, 1978 FROM THE CHINA COUNCIL FOR THE PROMOTION OF INTERNATIONAL TRADE TO THE DOCUMENTS HANDED TO THE COUNCIL BY THE DELEGATION OF THE NATIONAL COUNCIL FOR US-CHINA TRADE IN OCTOBER 1976 STATING THAT "REGISTRATION OF TRADEMARKS OF THE PEOPLE'S REPUBLIC OF CHINA IN THE UNITED STATES IS ALREADY PERMITTED UNDER APPLICABLE UNITED STATES LAW." IT IS ASSUMED THAT THE CHINA COUNCIL UNDERSTANDS THAT ONLY PRC ORIGIN MARKS THAT ARE IN ACTUAL USE IN COMMERCE IN OR WITH THE UNITED STATES MAY BE REGISTERED. IT SEEMS DESIRABLE THAT THERE BE NO MISUNDERSTANDING ABOUT THIS POINT. WHERE THERE HAS BEEN USE IN COMMERCE IN OR WITH THE UNITED STATES, PROOF OF REGISTRATION IN THE COUNTRY OF ORIGIN IS NOT A CONDITION TO REGISTRATION.

6. THERE ARE SPECIAL PROVISIONS IN THE U.S. STATUTE WHEREBY NATIONALS OF CERTAIN FOREIGN COUNTRIES CAN FILE APPLICATIONS BASED ON REGISTRATIONS OF THE SAME TRADEMARK IN THEIR COUNTRIES OF ORIGIN BEFORE THERE HAS BEEN

ANY USE OF THE MARK IN COMMERCE IN THE U.S. THESE PROVISIONS APPLY ONLY TO NATIONALS OF COUNTRIES WHICH ARE "PARTY TO CONVENTION OR TREATY RELATING TO TRADEMARKS (I.E. THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY) TO WHICH THE UNITED STATES IS ALSO A PARTY, OR EXTENDS RECIPROCAL RIGHTS TO NATIONALS OF THE UNITED STATES BY LAW." TRADEMARK ACT OF 1946, AS AMENDED, SECTION 44(B), 15 U.S.C. 1126B.

7. IN RESPONSE TO YOUR REQUEST (REF B), WE SENT YOU APRIL 6 A FULL SET OF US LAWS AND REGULATIONS PERTAINING TO TRADEMARKS AND INDUSTRIAL PROPERTY PROTECTION, ALONG WITH SOME EXPLANATORY MATERIALS (REGISTRY NO. 3352516). VANCE

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## Message Attributes

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**Concepts:** POLICIES, TRADEMARK APPLICATIONS  
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**Decaption Date:** 01 jan 1960  
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